

ORDINANCE NO. 19

SERIES 2013

**AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 5
OF THE CRESTED BUTTE MUNICIPAL CODE TO
INCLUDE REGULATIONS FOR THE PERMITTING OF
NEW BUSINESSES THAT SELL, MANUFACTURE AND
TEST RETAIL MARIJUANA AND MARIJUANA
PRODUCTS**

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, on November 6, 2012, State of Colorado voters approved Amendment 64 which added Section 16 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under Colorado law for, among other things, the sale, manufacture and testing of retail marijuana and marijuana products under a system of licensed establishments regulated by State and local governments;

WHEREAS, the Colorado General Assembly has adopted enabling legislation for Amendment 64 known as the Colorado Retail Marijuana Code (the "**CO MM Code**"), codified at Title, 12, Article 43.4, imposing requirements on the establishment and operation of businesses that sell, manufacture and test retail marijuana and marijuana products, and directing the Governor and the Colorado Department of Revenue (DRS) to adopt rules and regulations for such establishments;

WHEREAS, DRS has adopted rules and regulations (the "**DRS Rules**"; together with Amendment 64, the CO MM Code and the DRS Rules, collectively herein "**Applicable Law**"), set forth at 1 CCR 212-2, as amended, for, among other things, the regulation of the establishment and operation of businesses that sell, manufacture and test retail marijuana and marijuana products;

WHEREAS, Chapter 6, Article 5 of the Crested Butte Municipal Code (the "**Town Code**") contains regulations (the "**MM Regulations**") that govern, among other things, the licensing of medical marijuana centers;

WHEREAS, the Town Council, by and through the Town's Retail Marijuana Task Force (the "**Task Force**"), has reviewed and studied Applicable Law and the MM Regulations and found that, in furtherance of Applicable Law, the Town Council should adopt regulations regarding the establishment and operation of businesses that sell, manufacture and test retail marijuana and marijuana products, and making other conforming amendments to the Town Code, including, without limitation, making the use of property for such businesses conditional uses under Chapter 16 of the Town Code;

WHEREAS, the Task Force recommends that the Town Council adopt the regulations below regarding the establishment and operation of businesses that sell, manufacture and test retail marijuana and marijuana products, and making the use of property for such businesses conditional uses under the Town Code, the same being in furtherance to and consistent with Applicable Law; and

WHEREAS, the Town Council finds that the below amendments to the Town Code are in consistent with the Task Force’s recommendations, are consistent with Applicable Law and are in the best interest of the health, safety and general welfare of the residents and visitors of Crested Butte, and therefore, are appropriate for adoption.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Moratorium Termination. The temporary moratorium on the (A) the issuance of any new medical marijuana center license pursuant to the MM Regulations, and (B) establishment of any business that cultivates, manufactures, tests or sells marijuana or marijuana products adopted by way of Ordinance No. 12, Series 2013 is hereby terminated as of the effective date of this Ordinance.

Section 2. Amending Section 16-1-20. The following defined terms are amended and/or added to Section 6-1-20 and shall read as follows:

“Marijuana establishment shall have the meaning ascribed to such term in Section 6-5-40.

Medical marijuana center shall have the meaning ascribed to such term in Section 6-5-40.

Medical marijuana-infused product manufacturer shall have the meaning ascribed to such term in Section 6-5-40.

Retail marijuana products manufacturer shall have the meaning ascribed to such term in Section 6-5-40.

Retail marijuana store shall have the meaning ascribed to such term in Section 6-5-40.

Retail marijuana testing facility shall have the meaning ascribed to such term in Section 6-5-40.

School means a public or private preschool or a public or private elementary, middle, junior high or high school, all for the purpose of educating persons primarily under the age of 18.”

Section 3. Amending Section 16-5-230. Section 16-5-230 is hereby amended by adding the following new conditional uses thereto:

- “(16) retail marijuana store; and
- (17) medical marijuana center.”

Section 4. Amending Section 16-5-530. Section 16-5-530 is hereby amended by adding the following new conditional uses thereto:

- “(16) medical marijuana-infused product manufacturer;
- (17) retail marijuana store;
- (18) retail marijuana products manufacturer; and
- (19) retail marijuana testing facility.”

Section 5. Amending Section 16-8-85. Section 16-8-85 is hereby amended by deleting the Section in its entirety and replacing it with a new section that shall read as follows:

“Section 16-8-85. Criteria for Board decision relative to marijuana establishments

No conditional use permit for a marijuana establishment shall be given unless the following criteria are first met:

(1) None of the following marijuana establishments shall be allowed except in accordance with the following location requirements and restrictions:

(a) No marijuana establishment shall be located within 500 feet of any licensed child-care facility at the time of establishment of such business.

(b) No marijuana establishment shall be located within 500 feet of any school at the time of establishment of such business.

(c) No marijuana establishment shall be located within 175 feet of any public park or playground at the time of establishment of such business.

(d) No marijuana establishment shall be located adjacent to, as defined in Section 6-5-40 of this Code, a residential dwelling at the time of the establishment of such business.

(e) No marijuana establishment shall be located in a movable or mobile structure.

(f) No marijuana establishment shall be located in a residential unit of any kind.

(g) Marijuana establishments may not serve as home occupations as defined in Section 16-1-20 of this Code.

(h) Marijuana establishments must have unique physical addresses.

(i) Medical marijuana centers and retail marijuana stores must be accessible from public rights-of-way.

(2) In addition to the conditional use criteria set forth in this Article, the Board shall consider whether the issuance of a conditional use permit for a marijuana establishment would result in or cause an undue concentration of such businesses within the Town.

(3) A conditional use permit for a marijuana establishment may not be issued for premises used in conjunction with a conditional use for a restaurant or other use that serves and/or prepares foodstuffs.

(4) A conditional use for any medical marijuana-infused product manufacturer or retail marijuana products manufacturer may be granted only where the production of such products is demonstrated to be in compliance with State requirements regarding the production of foodstuffs.

(5) Before a conditional use permit for a marijuana establishment may be issued, the applicant therefor must demonstrate that electrical service satisfactory to the Building Official will be utilized at the premises and moisture, dust, vapors, fumes and odors being created at the premises will be adequately confined and mitigated to the satisfaction of the Building Official so that no nuisance could exist to nearby properties and the public.

(6) Only five (5) conditional use permits total for the following uses shall be allowed at any given time:

(a) medical marijuana centers, retail marijuana stores and dual medical marijuana center and retail marijuana store; and

(b) medical marijuana-infused product manufacturers and retail marijuana product manufacturers.

Only two (2) conditional use permits for retail marijuana testing facilities shall be allowed at any given time. Dual uses for (1) medical marijuana centers and retail marijuana stores, and (2) medical marijuana-infused product manufacturers and retail marijuana product manufacturers shall be allowed under one (1) conditional use permit.

(7) Section 6-5-210 of this Code shall have been complied with prior to the issuance of the conditional use permit for a marijuana establishment.

(8) It is contemplated that the applicant for a conditional use permit for a marijuana establishment may apply for such conditional use while the State Licensing Authority is processing the application for the subject marijuana establishment to the extent permitted under the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code and the regulations thereunder.

(9) The conditional use permit for a marijuana establishment shall at all times be conditioned upon the continued existence of the license for such marijuana establishment as described in Chapter 6, Article 5 of the Code. Where such license expires or is otherwise terminated or revoked, the corresponding conditional use permit shall similarly expire or otherwise be terminated or revoked without further action of the Town. For purposes hereof, the transfer and reissuance of a license for a marijuana establishment pursuant to Section 6-5-220 shall not be deemed to be a termination of said license and the related conditional use permit. Such condition and the requirements of Chapter 6, Article 5 shall be incorporated into the conditional use permit by reference.”

Section 6. Amending Section 16-8-100. Subsection (b) of Section 16-8-100 is hereby amended and replaced with the following new subsection (b) that shall read as follows:

“(b) Notwithstanding subsection (a) hereinabove, a conditional permit use for a marijuana establishment shall automatically terminate upon the expiration, termination or revocation of the license for such business issued pursuant to Chapter 6, Article 5 of the Code. For purposes hereof, the transfer and reissuance of a license for a marijuana establishment pursuant to Section 6-5-220 shall not be deemed to be a termination of said license and the related conditional use permit. In the case of such a transfer, the license may be reissued in the name of the transferee and the related conditional use permit shall continue to remain in effect under the same conditions and requirements set forth therein, except where changes to the conditional use permit are necessitated under the Code, including, without limitation, on account of any physical change, modification or alteration to the licensed premises as described in Section 6-5-100(g).”

Section 7. Amending Chapter 6, Article 5. Chapter 6, Article 5 of the Town Code is hereby deleted in its entirety and replaced with a new Article 5 that shall read as follows:

ARTICLE 5

Marijuana Establishment Licensing

Sec. 6-5-10. Purpose.

The purpose of this Article is to implement the provisions of Title 12, Article 43.3, C.R.S., known as the Colorado Medical Marijuana Code, and Title 12, Article 43.4, C.R.S.,

known as the Colorado Retail Marijuana Code, as amended, which authorizes the licensing and regulation of marijuana establishments, and affords local government the option to determine whether or not to allow certain medical and retail marijuana businesses within their jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in State law. By adoption of this Article, the Town Council does not intend to authorize or make legal any act that is not permitted under federal or State law.

Sec. 6-5-20. Effective Date; Applicability.

This Article shall be effective October 1, 2013, and shall govern all applications submitted to the Local Licensing Authority for the licensing of marijuana establishments in Crested Butte under the Colorado Retail Marijuana Code and the Colorado Medical Marijuana Code, as applicable.

Sec. 6-5-30. Incorporation of Colorado law.

The provisions of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code and any rules and regulations promulgated thereunder, as amended, are incorporated herein by reference, except to the extent that more restrictive or additional regulations are set forth in this Article.

Sec. 6-5-40. Definitions.

For purposes of this Article, the following definitions shall apply:

adjacent or adjoining means, for purposes of this Article, adjacent to or contiguous with the proposed location of a marijuana establishment. Adjacency shall not be deemed to exist where a platted or dedicated public street or alley exists between the proposed marijuana establishment and another property. For purposes of medical marijuana centers, retail marijuana stores and retail marijuana testing facilities, adjacency shall also not be deemed to exist where such marijuana establishments shares a common ceiling or floor with another premises and where the marijuana establishment and the other property are not otherwise adjacent within the meaning of this definition. For purposes of medical marijuana-infused product manufacturers and retail marijuana products manufacturers, adjacency shall be deemed to exist where such marijuana establishments share a common ceiling or floor with another premises.

alcoholic beverage shall have the meaning ascribed to such term in Section 10-7-10 of this Code.

applicant means any person who has submitted an application for a license or a renewal thereof pursuant to this Article. An applicant must be twenty-one (21) years of age or older. If an applicant is an entity, the term *applicant*, as applied in this Article, shall include all those persons who have a financial or management interest in the entity, including, without limitation, the shareholders, members, directors, officers and managers of such entity.

application means an application for a license submitted pursuant to this Article.

Board means the Board of Zoning and Architectural Review.

Building Official means the Town Building Official as defined and referred to elsewhere in this Code.

cultivation means the process by which a person promotes the germination and growth of a seed to a marijuana plant.

good cause shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code, as applicable.

license means a license to operate a marijuana establishment issued by the Town pursuant to this Article.

licensee means the applicant or its permitted transferee or assignee to which a license has been issued, transferred or assigned pursuant to this Article.

Local Licensing Authority shall have the meaning ascribed to such term in Section 6-5-50.

marijuana establishment shall include each and all of the following businesses: medical marijuana center, medical marijuana-infused product manufacturer, retail marijuana store, retail marijuana products manufacturer store and retail marijuana testing facility.

marijuana paraphernalia or *paraphernalia* means devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana, including but not limited to rolling papers and related tools, water pipes and vaporizers.

medical marijuana shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

medical marijuana center shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

medical marijuana-infused product shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

medical marijuana-infused product manufacturer shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

optional premises shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

optional premises cultivation operation shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

patient has the meaning provided in Section 14 of Article XVIII of the Colorado Constitution.

person means a natural person, partnership, association, company, corporation, limited liability company or other organization, or a manager, agent, owner, director, servant, officer or employee thereof.

premises means a distinct and definite location, which may include a building, part of a building, a room or any other definite contiguous area.

retail marijuana shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

retail marijuana cultivation facility shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

retail marijuana products shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

retail marijuana products manufacturer shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

retail marijuana store shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

retail marijuana testing facility shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

State Licensing Authority shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code, as applicable.

Sec. 6-5-50. Local Licensing Authority.

There shall be and is hereby created a local licensing authority for marijuana establishments. The Town Council shall constitute the Local Licensing Authority. The Town Clerk shall serve as clerk to the Local Licensing Authority and the Town Attorney shall serve as its legal counsel.

Sec. 6-5-60. Functions and powers of Local Licensing Authority.

(a) The Local Licensing Authority shall have all the powers of the Local Licensing Authority as set forth in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana

Code and this Article. Such powers shall include, without limitation, the power to require any applicant or licensee to furnish any relevant information in connection with the application or license for a marijuana establishment, the power to promulgate rules and regulations concerning the procedures for hearings before the Local Licensing Authority and the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing which the Local Licensing Authority is authorized to conduct. Any such subpoenas shall be served in the same manner as a subpoena issued by the District Court for the State.

(b) The Local Licensing Authority shall have the power and authority to issue licenses for marijuana establishments pursuant to this Article.

Sec. 6-5-70. Optional premises cultivation operations and retail marijuana cultivation facilities prohibited.

Optional premises cultivation operations and retail marijuana cultivation facilities are strictly prohibited in Town, and the Local Licensing Authority shall not have the power and authority to license such businesses.

Sec. 6-5-80. Town and State licenses required.

It shall be unlawful for any person to establish or operate a marijuana establishment in Crested Butte without first having obtained from the Local Licensing Authority and the State Licensing Authority a license for such marijuana establishment. Such license shall be kept current at all times, and the failure to maintain a current license from both the Town and the State shall constitute a violation of this Section.

Sec. 6-5-90. Classes of licenses authorized.

The Local Licensing Authority may issue and grant to an applicant a license from any of the following classes, and the Town hereby authorizes the issuance of licenses of the following classes by the State Licensing Authority in locations in the Town allowed under the Code, subject to the requirements of this Article:

- (1) medical marijuana centers;
- (2) medical marijuana-infused product manufacturers;
- (3) retail marijuana stores;
- (4) retail marijuana products manufacturers; and
- (5) retail marijuana testing facilities.

The Local Licensing Authority may issue dual licenses for:

(a) medical marijuana centers and retail marijuana stores; and

(b) medical marijuana-infused product manufacturers and retail marijuana product manufacturers.

The requirements of the Code shall apply equally to each, including, without limitation, the requirement to pay all application and other fees.

Sec. 6-5-100. Requirements for application; ongoing requirements.

(a) A person seeking to obtain or renew a license or gain a transfer of a license shall file an application with the clerk for the Local Licensing Authority on forms provided by the clerk.

(b) An application for a license under this Article shall contain, at a minimum, the following information and submittals:

(1) Application fee.

(2) The applicant's personal and identification information.

(3) The street address of the proposed marijuana establishment.

(4) If the applicant is not the sole owner of the proposed location of the marijuana establishment, a notarized statement from the owner or co-owners of such property authorizing the submission of the application.

(5) Evidence of a right to possess (e.g., vesting deed, lease, option to lease) the property that is the subject of the marijuana establishment.

(6) A statement of the applicant's personal, financial and business backgrounds.

(7) A complete set of the applicant's fingerprints as taken by the Crested Butte Marshal's Department.

(8) A sworn statement, to be acknowledged by the applicant and the owner of the premises that the applicant, owner and all the employees of the marijuana establishment may be subject to prosecution under State, federal and local controlled substance laws.

(9) An acknowledged waiver by the applicant and the owner of the premises that the applicant, owner and all employees of the marijuana establishment waive any and all claims against the Town in connection with the approval and subsequent operation of the marijuana establishment.

(10) An acknowledgement and consent that the Town will conduct a background investigation, including, without limitation, criminal history check, and the Town will be entitled to full and complete disclosure of all financial records of the marijuana establishment, including, without limitation, records of deposit, withdrawals, balances and loans.

(11) Drawings to scale of the premises and all entryways and exits thereto as required by the Building Official.

(12) Proof of State of Colorado residency.

(13) All of those items required in the application form.

(14) Any additional information and submittals that the Local Licensing Authority reasonably determines to be necessary and appropriate in connection with the investigation and review of the application.

(c) For the purposes of Paragraphs (2), (6), (8), (10), (12) and (14) above, the proposed manager of the marijuana establishment, all persons having a financial interest in the marijuana establishment and, if the applicant is an entity, all persons having a financial interest or other interest in the entity shall be expected to comply with said application requirements.

(d) Marijuana establishments shall submit the following at the time of submittal of the application:

(1) An operations plan for the marijuana establishment that shall contain, without limitation: (i) a security plan that complies with this Article, the Colorado Medical Marijuana Code or Colorado Retail Marijuana Code and rules and regulations promulgated thereunder; (ii) hours of operation; (iii) number of employees; (iv) a description of all products to be sold; (v) a description of all products to be manufactured; and (vi) the application and all submittals and supporting documentation submitted to the State Licensing Authority.

(2) If the applicant is an entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status and proof of registration (e.g., articles of incorporation, articles of organization) with, or certificate of good standing from, the Colorado Secretary of State, as applicable, and organizational documents (e.g., operating agreement, stockholders agreement, partnership agreement, stock, membership and partnership interest ledgers).

(3) A complete lighting plan in compliance with the applicable requirements contained in this Code.

(4) A complete signage plan in compliance with the applicable requirements contained in this Code.

(5) Any additional supporting documentation that the Local Licensing Authority determines to be necessary and appropriate in evaluating the application.

(e) Following receipt of a license for a marijuana establishment from the Town and a conditional use permit from the Board, the licensee shall apply for and obtain a Town sales tax license and a Town business license before commencing operations.

(f) The licensee shall at all times maintain an active, up-to-date and valid State sales tax license, Town sales tax license and Town business license.

(g) The licensee shall make no physical change, modification or alteration to the licensed premises without the prior approval of the Local Licensing Authority, and the Board where required. For purpose hereof, a physical change, modification or alteration of premises shall be as described in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code and the regulations thereunder, including Sections 16.115 and R-305 respectively.

(h) The licensee shall at all times keep and maintain the application and all associated submittals and supporting documentation up to date and current during the license term and any renewal.

(i) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain any other required Town permits related to the operation of the approved marijuana establishment, including but not limited to any additional required conditional use permits, development approvals and building permits required by this Code.

Sec. 6-5-110. Duration of license.

Each license shall be valid for one (1) year from the date of issuance and may be renewed only as permitted in this Article. All renewals of a license shall be for no more than one (1) year.

Sec. 6-5-120. Number of licenses; first-come, first-served.

(a) Only five (5) licenses total for the following marijuana establishments shall be allowed at any given time:

(a) medical marijuana centers, retail marijuana stores and dual medical marijuana center and retail marijuana store; and

(b) medical marijuana-infused product manufacturers and retail marijuana product manufacturers.

Only two (2) licenses for retail marijuana testing facilities shall be allowed at any given time. Dual licenses for (1) medical marijuana centers and retail marijuana stores, and (2) medical

marijuana-infused product manufacturers and retail marijuana product manufacturers shall be allowed under one (1) license.

(b) Applications shall be received by the clerk for the Local Licensing Authority on a first-come, first-served basis. The clerk for the Local Licensing Authority may not accept an application for a license until such time as the State Licensing Authority has approved the application subject only to Local Licensing Authority approval only.

Sec. 6-5-130. Processing of new applications; public hearing, notice, posting and publication.

Applications for licenses shall be processed by the Local Licensing Authority pursuant to the requirements and procedures of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, inclusive of, without limitation, the notice and hearing requirements contained in Section 12-43.3-302 and 12-43.4-302, C.R.S., as applicable, and the rules and regulations promulgated thereunder. Applications for new licenses shall only be approved after a hearing held by the Local Licensing Authority in accordance with the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, as applicable, and the rules and regulations promulgated thereunder. No hearing of the Local Licensing Authority shall occur until after the Board has granted a conditional use permit for the marijuana establishment.

Sec. 6-5-140. Processing of renewal applications; license renewal requirements.

All license renewal applications shall be applied for by the licensee thereof, and processed by the Local Licensing Authority, pursuant to the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, inclusive of, without limitation, the provisions contained in Section 12-43.3-311 and 12-43.4-310, C.R.S., as applicable, and the rules and regulations promulgated thereunder. Except where the Local Licensing Authority holds a hearing on account of complaints filed against the subject license or licensee, or the license or licensee has a history of violations, licensee is not in compliance with the Code, including, without limitation, the requirement to pay sales tax, the Colorado Medical Marijuana Code, Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder or there are allegations against the license or licensee that would constitute good cause, the clerk shall process such renewal application administratively pursuant to this Article, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder and issue the license without a hearing of the Local Licensing Authority.

Sec. 6-5-150. Initial application and renewal fees.

(a) An applicant shall pay the Town a nonrefundable application fee when the application is filed and then annually thereafter as part of any renewal. The purpose of the fee is to cover the administrative costs of processing the application and renewal and to defray the costs and expenses incurred by the Town in regulating marijuana establishments and enforcing the requirements of this Article. Application and renewal fees shall be set by resolution of the Town Council and may be amended from time to time.

(b) If the Board denies the issuance of a conditional use permit for the premises of the marijuana establishment, the application fee shall nevertheless be deemed liquidated.

Sec. 6-5-160. Denial of issuance of license or renewal.

The Local Licensing Authority shall deny any application, whether for an initial application or any renewal, that does not meet the requirements of the Code, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder. The Local Licensing Authority may also deny any application that contains any false, misleading or incomplete information and for good cause shown. Denial of an application for a license shall be reviewed only by a court of competent jurisdiction.

Sec. 6-5-170. Suspension and revocation of license.

A license may be suspended and/or revoked in accordance with the requirements and procedures of the Code, Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, including, without limitation, the provisions contained in Section 12-43.3-601 and 12-43.4.601, C.R.S., as applicable, and the rules and regulations promulgated thereunder.

Sec. 6-5-180. Authority to impose conditions on license.

The Local Licensing Authority shall have the authority to impose any and all such reasonable terms and conditions on a license and any renewal thereof as may be necessary to protect public health, safety and welfare and to obtain compliance with the requirements of the code, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, the rules and regulations promulgated thereunder and other applicable law.

Sec. 6-5-190. License conditional upon granting of conditional use by Board.

Notwithstanding anything contained in this Article, the issuance of a license for a marijuana establishment shall be only after and conditioned upon the Board granting a conditional use permit for the marijuana establishment. Should a license expire, be terminated or not renewed, the conditional use for the marijuana establishment shall automatically expire or be terminated without further action by the Board or Town Council.

Sec. 6-5-200. Contents of license.

A license shall contain, without limitation, the following information:

- (1) The name of the licensee;
- (2) The effective date of the license;
- (3) The address of the premises connected with the license to operate the

medical marijuana establishment or retail marijuana establishment;

(4) Any conditions of approval imposed upon the license by the Local Licensing Authority pursuant to Section 6-5-180 of this Article;

(5) The date of the expiration of the license

(6) Reference to this Article;

(7) Reference the conditional use permit given by the Board inclusive of any conditions contained therein; and

(8) Signature of the Town Clerk.

Sec. 6-5-210. Inspection of premises.

Prior to the issuance of a conditional use permit, the premises at which the marijuana establishment will be operated shall be inspected by the Building Official to determine compliance with the Town's building and technical codes. No conditional use permit shall be issued if the premises at which the marijuana establishment will be operated fails to comply at the time of issuance of the permit with the Town's building and technical codes and this Article. Throughout the term of the license, the Building Official may inspect the premises at which the marijuana establishment is operated to determine continuing compliance with the Town's building and technical codes and this Article. Access to such premises may be obtained by the Building Official in accordance with the applicable provisions of the Code.

Sec. 6-5-220. License in gross; license transferrable.

The license shall be deemed to be a license in gross and shall not be a property right. The license is transferable and assignable; provided that, the requirements of this Article, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder are at all times satisfied by the transferee or assignee.

Sec. 6-5-230. Duties of licensee.

It is the duty and obligation of each licensee to:

(1) Comply with all of the terms and conditions of the license and any special conditions on the license imposed by the Local Licensing Authority pursuant to Section 6-5-180 of this Article;

(2) Comply with all of the requirements of this Article;

(3) Comply with all other applicable provisions of this Code, Town ordinances and other Town requirements;

(4) Comply with the conditional use permit given by the Board;

(5) Comply with all State laws and administrative regulations pertaining to marijuana establishments, including, but not limited to Sections 14 and 16 of Article XVIII of the Colorado Constitution, Title 18, Article 18, C.R.S., the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder; and

(6) If the Local Licensing Authority has a reasonable suspicion that the licensee is violating or has violated the terms and conditions of the license, the licensee shall allow inspection of its records, building or structure and operations by the Town for the purpose of determining the licensee's compliance with the terms and conditions of the license. Nothing in this Section shall abrogate or affect (i) any applicable confidentiality provision of State or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizures of property. In the event of any conflict between this Section and any applicable State or federal law, the applicable provision of State or federal law shall in all cases prevail and control.

Sec. 6-5-240. Posting of license.

The license shall be continuously posted in a conspicuous location at the marijuana establishment.

Sec. 6-5-250. Limitation on sale of paraphernalia.

Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited, to rolling papers and related tools, water pipes and vaporizers, may lawfully be sold at a medical marijuana center or retail marijuana store; provided that, in the case of medical marijuana and medical marijuana-infused products, such items may only be sold or provided to patients or primary caregivers and as are reasonably necessary for the consumption of medical marijuana in accordance with Colorado law, and, in the case of retail marijuana and retail marijuana products, such items may only be sold to persons in accordance with Sections 16 of Article XVIII of the Colorado Constitution, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder.

Sec. 6-5-260. Restrictions on sale of foodstuffs.

No marijuana establishment may be colocated with food cooking and preparation facilities that prepare, produce or assemble foodstuffs, whether for medical or nonmedical purposes. The preparation of all medical marijuana and retail marijuana products shall be in accordance with applicable law, including the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder, as well as any Town requirements.

Sec. 6-5-270. Hours of operation.

Medical marijuana centers and retail marijuana stores may be open for the sale of medical marijuana, medical marijuana-infused products and retail marijuana products, as applicable, during the hours of 9:00 a.m. to 8:00 p.m. only, seven (7) days per week. There shall be no restriction on the hours of operation of other marijuana establishments.

Sec. 6-5-280. Signage.

(a) All signage for medical marijuana centers and retail marijuana stores shall comply with the requirements of Chapter 16, Article 18 of this Code.

(b) No marijuana establishment shall use any advertising material that is misleading, deceptive or false, or that, as evidenced either by the content of the advertising material or by the medium or the manner in which the advertising is disseminated, is designed to appeal to minors, including, without limitation, the depiction of a marijuana leaf or plant, medical marijuana-infused products and retail marijuana products such as, for example, lollipops, candies, cookies and brownies.

(c) It shall be unlawful for any marijuana establishment to advertise anywhere in Crested Butte where the advertisement is visible to members of the public from any street, sidewalk, public right of way, park or public place, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device; any sign mounted on a vehicle, any hand-held or portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle or posted upon any public or private property without the consent of the property owner. The following prohibition shall not apply to:

(i) any sign located on the premises which exists solely for the purpose of identifying the location of the marijuana establishment and which otherwise complies with the Code;

(ii) any advertisement contained within a newspaper, magazine or other publication of general circulation with Crested Butte; or

(iii) advertising which is purely incidental to sponsorship or a charitable event by a marijuana establishment.

For purpose hereof, “advertise,” “advertising” and “advertisement” shall mean the act of drawing the public’s attention to a marijuana establishment in order to promote the business of the same.

Sec. 6-5-290. Required warnings to be posted.

There shall be posted in a conspicuous location in each medical marijuana center and retail marijuana store a legible sign containing warnings that:

(1) The use of marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and it is illegal under State law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;

(2) Loitering in or around medical marijuana center or retail marijuana store is prohibited by State and Town laws; and

(3) Possession and distribution of marijuana is a violation of federal law.

All signage shall comply with the Code, Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the rules promulgated thereunder.

Sec. 6-5-300. On-site consumption of marijuana and marijuana products.

The consumption, ingestion or inhalation of marijuana, medical marijuana-infused products and retail marijuana products on or within the premises of a marijuana establishment is strictly prohibited.

Sec. 6-5-310. On-site consumption of alcohol.

The sale, ingestion or consumption of any alcoholic beverage within a marijuana establishment is strictly prohibited.

Sec. 6-5-320. Restrictions on cultivation, growing and manufacturing or marijuana and marijuana products; storage.

(a) The growing and cultivation of marijuana of any kind on or within the premises of a marijuana establishment is strictly prohibited.

(b) The manufacturing of medical marijuana-infused products and retail marijuana products on or within the premises of a medical marijuana center, any retail marijuana store or any retail marijuana testing facility is strictly prohibited.

(c) All marijuana establishment product and paraphernalia storage, dispensing, sale and distribution activities shall be conducted only on the premises licensed in connection with such product and paraphernalia, indoors and shall be strictly prohibited from delivery to any person at any other location.

(d) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the marijuana establishment must be undertaken and maintained at all times. In the event that any odors, debris, items, dust, fluids or other substances shall exit the marijuana establishment, the owner or the subject premises and the licensee shall be jointly and severally responsible for such conditions and shall be responsible for full cleanup, cessation and/or mitigation of this condition immediately. Marijuana establishments shall

properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner in accordance with the Code, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and rules and regulations promulgated thereunder.

Sec. 6-5-330. Display; deliveries.

(a) No marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be displayed so as to be visible through glass, windows or doors by a person of normal visual acuity standing at the outside perimeter of the marijuana establishment. No marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be visible from a public sidewalk or right-of-way.

(b) All deliveries of marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be conducted discreetly and out of plain sight of all other persons not associated with the marijuana establishment and shall comply with the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder.

Sec. 6-5-340. Security requirements.

The licensee shall provide security as provided in, and the premises shall at all times comply with, the security requirements set forth in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder.

Sec. 6-5-350. Disposal.

The disposal of, without limitation, unwanted marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be undertaken in accordance with the provisions of the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder.

Sec. 6-5-360. Sales tax.

Each licensee shall collect and remit Town sales tax on all marijuana establishment product and paraphernalia and other tangible personal property sold by the licensee at a medical marijuana center or retail marijuana store in accordance with this Code. Failure to timely remit Town sales tax in accordance with the Code shall be grounds for the suspension, revocation or non-renewal of any license.

Sec. 6-5-370. Recordkeeping.

(a) Each licensee shall maintain an accurate, complete and up to date record at all times of all marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia and other tangible personal property produced, distributed and sold by the

marijuana establishment and the amounts paid therefor. Such information shall be available for Town review upon request.

(b) The licensee's records described in Subsection (a) above shall be available for inspection by the Marshal's Department pursuant to Rule 41, C.R.C.P., or Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) Nothing in this Section shall abrogate or affect: (1) any applicable confidentiality provision of State or federal law; or (2) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this Section and any applicable State or federal law, the applicable provision of State or federal law shall control.

Sec. 6-5-380. Violation and penalty; remedies cumulative.

Any person who violates any of the provisions of this Article shall be subject to the violation and penalty provisions set forth in Chapter 1, Article 4 of this Code. All remedies contemplated in this Section shall be deemed cumulative and concurrent.

Sec. 6-5-390. No waiver of governmental immunity.

In adopting this Article, the Town Council is relying on, and does not waive or intend to waive by any provision of this Article, the monetary limitations (presently three hundred fifty thousand dollars (\$350,000.00) per person and nine hundred ninety thousand dollars (\$990,000.00) per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or any other limitation, right, immunity or protection otherwise available to the Town, its officers, its employees, insurance, insurance pools, agents and attorneys, whether at law and/or in equity.

Sec. 6-5-400. No Town liability.

By accepting a license issued pursuant to this Article, the licensee, jointly and severally if more than one, waives and releases the Town, its officers, elected officials, employees, attorneys, insurers, insurance pools and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of the owners, operators, employees, clients or customers of any marijuana establishment for a violation of State or federal laws, rules or regulations.

Sec. 6-5-410. Indemnification of Town.

By accepting a license issued pursuant to this Article, the licensee, jointly and severally if more than one, shall indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, insurers and insurance pool against all liability, claims, damages and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or

damage or any other loss, claim, damage or demand of any kind whatsoever, which arise out of or are in any manner connected with the operation of any marijuana establishment that is the subject of a license. The licensee further agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims, losses, damages or demands at its expense and to bear all other costs and expenses related thereto, including court costs and attorneys' fees.

Sec. 6-5-420. Other laws remain applicable.

The provisions of this Article do not, and are not intended to, protect licensees, operators, employees, customers, property owners and clients of a permitted marijuana establishment from prosecution pursuant to any laws that may prohibit the growing, cultivation, sale, use, distribution or possession of controlled substances. In addition, as of the date of the adoption of this Article, the growing, cultivation, sale, possession, distribution and use of marijuana remains a crime in violation of federal controlled substances laws and this Article affords no protection against prosecution under such federal laws. Licensee, operators, employees, customers, property owners and clients of the permitted marijuana establishment assume any and all risk and any and all liability arising or resulting from the operation of the marijuana establishment. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town shall not become a personal liability of such person or of the Town.”

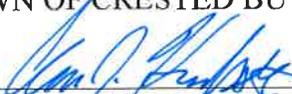
Section 8. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 9. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town Council that is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 19th DAY OF AUGUST, 2013.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 16th DAY OF SEPTEMBER, 2013.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:

Shelley Jansen
Shelley Jansen, Town Clerk

